

## **REMARKS**

Applicant requests re-examination and reconsideration of the objections and rejections presented in the July 1, 2005 Office Action.

Claims 1-67 appear in this amendment for the Examiner's review. No new claims have been added.

Claims 1, 9-11, 14, 16-18, 22-24, 27-38, 40-42, 45, 50, 52-53, 57, 60, 65-67 have been amended to correct typographical errors.

Claims 21 and 39 have been amended to clarify the meaning of the claims and to correct typographical errors. The basis for the clarifying amendments may be found in the original specification, including claims and drawings, for example on page 20, lines 25-30.

No new matter has been added.

### Claim Objections – Compliance with 37 C.F.R. §1.75(c)

As stated in Paragraphs 1 and 2 of the July 1, 2005 Office Action, Claim 21 is objected to as allegedly being of improper dependent form for failing to further limit the subject matter of Claim 1. Claim 21 is also objected to as being unclear and as having a typographical error.

A telephonic interview with the Examiner was conducted by applicant's agent Tom Hall on August 1, 2005. The subject of that interview was Claim 21, specifically an amendment to Claim 21 which will likely overcome the objection presented in the July 1, 2005 Office Action. Pursuant to the interview, Claim 21 has been amended to further limit the subject matter of the claim from which it depends and to correct typographical errors. Claim 39 has been similarly amended; and, to correct an additional typographical error, Claim 39 now depends from Claim 24. The amendments to Claims 21 and 39 specify further limitations on the physical form of a film that defines a package.

Therefore, the applicant submits that it has overcome the claims objections and respectfully requests that the Examiner withdraw these objections.

Claims Rejections – Compliance with 35 U.S.C. §102(b)

As stated in Paragraph 4 of the July 1, 2005 Office Action, Claims 1-4, 6-13 and 17-23 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5,874,155 to Gehrke et. al. (“Gehrke et. al.”). The applicant respectfully traverses this rejection.

Gehrke et. al. disclose flexible multilayer packaging film and packages comprising an easy-opening tear feature. Column 3, lines 3-12, disclose the easy-opening tear feature as obtained by a surface roughening of the entire surface of the package; this surface roughening may be achieved by small nicks or minute cuts. The surface roughening is equated to nicks and cuts; it is not separated or distinguished from nicks and cuts. Roughening is further disclosed by Gehrke et. al. at Column 1, line 64 – Column 2, line 4 and at Column 5, lines 17-25. It is clear that Gehrke et. al.’s use of the term “roughening” does not equate to “scoring.” Gehrke et. al. does not disclose a combination of the two distinct elements of surface roughening and score line.

In contradistinction, Claims 1-4, 6-13 and 17-23, as well as Claims 24, 42 and 54, include, but are not limited to, a first film layer comprising a surface-roughened portion on an external surface and a separate, distinct fourth film layer with at least one-score line on an external surface.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference” (M.P.E.P. §2131 Eighth Edition, August 2001, Latest Revision October 2005, quoting Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). Therefore, the applicant respectfully submits that Gehrke et. al. does not anticipate Claims 1-4, 6-13 and 17-23 and that these claims are patentable over Gehrke et. al.

Claims Rejections – Compliance with 35 U.S.C. §103(a)

As stated in Paragraph 6 of the July 1, 2005 Office Action, Claim 5 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,874,155 to Gehrke et. al. (“Gehrke et. al.”). The applicant respectfully traverses this rejection.

As discussed above, Gehrke et. al. does not disclose a combination of the two distinct elements of surface roughening and score line

In contradistinction, Claim 5 (as it depends from Claim 1) includes, but is not limited to, a first film layer comprising a surface-roughened portion on an external surface and a separate, distinct fourth film layer with at least one-score line on an external surface.

“To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” (M.P.E.P. §2131 Eighth Edition, August 2001, Latest Revision October 2005, citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)). Therefore, the applicant respectfully submits that Gehrke et. al. does not teach or suggest all of the limitations of Claim 5 and that Claim 5 is patentable over Gehrke et. al.

As stated in Paragraph 7 of the July 1, 2005 Office Action, Claims 14-16 and 24-67 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,874,155 to Gehrke et. al. (“Gehrke et. al.”) in view of U.S. Patent No. 5,783,266 to Gehrke (“Gehrke”).

As discussed above, Gehrke et. al. disclose flexible multilayer packaging film and packages comprising an easy-opening tear feature. Column 3 lines 3-12, of Gehrke et. al., disclose the easy-opening tear feature as obtained by a surface roughening of the entire surface of the package; this surface roughening may be achieved by small nicks or minute cuts. The surface roughening is equated to nicks and cuts; it is not separated or distinguished from nicks and cuts. Roughening is further disclosed by Gehrke et. al. at Column 1, line 64 – Column 2, line 4 and at Column 5, lines 17-25. It is clear that Gehrke et. al.’s use of the term “roughening” does not equate to “scoring.” Gehrke et. al. does not disclose a combination of the two distinct elements of surface roughening and score line.

Gehrke also discloses flexible multilayer packaging film and packages comprising an easy-open feature. Column 4 lines 53-57, of Gehrke, disclose the easy-open feature as obtained by scoring or roughening the outer layer sheet material by mechanical means or by a laser. Gehrke discloses using either scoring or roughening; it does not disclose a combination of scoring and roughening on separate film surfaces.

In contradistinction, Claim 14-16 and 24-67 include, but are not limited to, a first film layer comprising a surface-roughened portion on an external surface and a separate, distinct fourth film layer with at least one-score line on an external surface.

“To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art.” (M.P.E.P. §2131 Eighth Edition, August 2001, Latest Revision October 2005, citing In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA

1974)). Therefore, the applicant respectfully submits that a combination of Gehrke et. al. and Gehrke does not teach or suggest all of the limitations of Claims 14-16 and 24-67 and that Claims 14-16 and 24-67 are patentable over these references.

Conclusion

In view of the above amendment and remarks, the applicant submits that the claims are patentable and in condition for allowance. The applicant respectfully requests that the examiner withdraw the outstanding objections and rejections.

If a telephone conference would expedite allowance of the claims, the Examiner may contact the applicant via applicant's attorney at (920) 303-7970.

Respectfully submitted,

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